IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2007

C O R A M :

THE HONOURABLE MR. JUSTICE S.TAMILVANAN

Crl.R.C.No.722 of 2003

R.Srinivasan @ Ramasamy .. Petitioner/Complainant

-vs-

1. State by
The Inspector of Police,
Kangayam Police Station,
Kangayam, Erode District.
(Crime No.32/2001)

2. Palanisamy
3. Subramani
4. Thangavelu .. Respondents/Accused

Criminal Revision preferred under Section 397 and 401 Cr.P.C. against the order of the Judicial Magistrate, Kangayam, Erode District, dated 12.03.2003, passed in S.T.C No.627 of 2002.

For petitioner :: Mr.C.Prakasam

For 1st respondent :: Mr.Hasan Mohamed Jinnah
Government Advocate (Crl. Side)

For 2 to 4
respondents :: Mr.U.N.Subramaniyam

ORDER

This revision is directed against the judgment of acquittal dated 12.03.2003, made in S.T.C. No.627 of 2002 on the file of the Judicial Magistrate, Kangayam, Erode District.

2. The brief facts of the prosecution case is as follows:
On 24.01.2001, at about 2.00 p.m. when the petitioner was standing at the Kangayam weekly market before a butcher shop, the accused 1 to 3 and some unidentified persons came to that place and attacked PW1 by hands and legs due to previous enmity between the P.W.1 and the first accused. Hence, the first respondent has filed a

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charge sheet against the accused 1 to 3 for the offences under Sections 341 and 323 of I.P.C.

3. In support of the prosecution case, apart from the complainant P.W. 1, P.W. 2 to P.W.11 were examined and Ex. P.1 to Ex.P.10 were marked.

4. According to the learned counsel for the revision petitioner, the prosecution has not proved the case against the respondents 2 to 4/accused, but the Trial Court without considering the evidence on record, has acquitted them from the charges levelled against them.

5. Per Contra, the learned counsel for the respondents 2 to 4 would contend that even the prosecution witnesses 2 to 5 do not disclose that they were attacked by the respondents 2 to 4, who were the accused in this case. According to PW1, some other persons engaged by the respondents 2 to 4/accused, had attacked them, but the persons said to have attacked PW1, were not arrayed as accused in this case, for the reasons best known to the prosecution.

6. The revision petitioner, who was examined as PW1, has disclosed in his submission that he had to pay Rs.50,000/- to the second respondent herein for which no document was given in writing. According to the learned counsel for the respondents 2 to 4, the third respondent/accused No.2, is the brother of the second respondent who had filed a case against PW1, which is pending before the Sub Court, Tharapuram, but the same is denied by the revision petitioner / de facto complainant. PW1, has stated in the complaint Ex.P1, that on the date of occurrence, the henchmen of one Vanangamudi had come in a Tata Sumo car and attacked him and others and not the respondents 2 to 4 / accused.

7. As per the complaint given by PW1, on the date of occurrence, when he was sitting under a tree and talking with PW2 to PW5 and others, the respondents 2 to 4 and others asked PW1 to accompany them since Vanangamudi asked them to bring PW1. But even as per the evidence of PW1, respondents 2 to 4 had never attacked and caused any injury to the revision petitioner PW1. Admittedly, the other witnesses PW2 to PW5 have also stated similarly that they were not attacked by the respondents 2 to 4, on the date of occurrence. The said Vanangamudi who also not arrayed as accused.

8. It is seen that PW1 has stated that some other persons came there and attacked and the said persons have not been arrayed as accused. Therefore, as held by the Court below no offence under Section 323 of I.P.C against the respondents 2 to 4, have been established. Similarly, the prosecution has not established that the said accused had assembled for the purpose of committing any offence,

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so as to constitute an offence of rioting punishable under Section 147 I.P.C. As per Section 146 I.P.C. to constitute offence of rioting, there should be an unlawful assembly of five or more persons with a common object of committing offence, which could be construed as rioting. But in this case, admittedly the revision petitioner has stated that only three persons have attacked him and even for the said allegation he has not given the name of the persons. To constitute the offence of rioting, five or more persons must be involved. Further, there is no evidence to show that they have committed the offence of rioting. Therefore the charge levelled against the respondents 2 to 4 / accused under Section 323 of I.P.C. has also not been established by the prosecution. It is a settled proposition of law that in a criminal revision, unless there is manifest error of law, patent illegality or perverse finding, resulting in miscarriage of justice, this Court cannot interfere with the finding of the Trial Court. In this case, I could find no such manifest error of law, illegality or perverse finding, resulting in failure of justice, so as to warrant the interference of this Court in the Judgment of acquittal recorded by the Trial Court.

9. Therefore, I am of the view that there is no illegality in the judgment rendered by the Court below in acquitting the respondents 2 to 4, so as to interfere with the findings of acquittal and hence this original revision petition is liable to be dismissed.

10. In result, the Criminal Revision Case is dismissed.

kk

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate,
   Kangayam, Erode District.

2. - do - thro' The Chief Judicial Magistrate,
   Erode.

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3. The Inspector of Police,
Kangayam Police Station,
Kangayam, Erode District.
(Crime No.32/2001)

4. The Public Prosecutor, High Court,
Madras.

1 CC TO MR.C. PRAKASAM, ADVOCATE (SR 6626)

Criminal Revision Case
No.722 of 2003

TEJ(CO)

BP/1.3

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